IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 41/2007

Gulf Goans Hotels Company Ltd.,
Having office at 207/208,
Citi Centre, 2nd Floor,
19, Patto Plaza,
Panjim, Goa 403 001. ……. Appellant.

V/s

1. Commissioner of Income Tax
Having office at Patto Aayakar Bhavan
Panjim-403 001.

2. Asst. Commissioner of Income Tax,
Circle -1, having Office at
Patto Aayakar Bhavan,
Panjim- 403 001. …… Respondents.

Mr. D.E. Robinson and Mr. Melvyn J. Aguiar, Advocates for the appellant.

Mr. S. R. Rivonkar, Advocate for the respondents.

CORAM : R.S. MOHITE &
N.A. BRITTO, JJ.

DATE : JULY 16, 2007.

ORAL JUDGMENT : (Per MOHITE, J.)

Heard both sides. Admit. By consent of both the parties, heard

forthwith.

2. This appeal has been filed by the appellant impugning the Assessment Orders made for the assessment years 1994-95 and 1995-96, which have been confirmed in appeal by the Commissioner of Income Tax (Appeals) vide his order dated 15.5.1998 and which have further been confirmed by the Income Tax Appellate Tribunal, Panjim Bench, Panjim vide its Order dated 19.1.2007. It appears that the lower authorities upheld the imposition of penalty imposed by the Assessing Officer. The Assessing Officer had levied penalty of Rs.4,13,732/- for the assessment year 1994-95 and penalty of Rs.8,73,460/- for the assessment year 1995-96 on the footing that the appellant had wrongly claimed deductions under Sections 80HHD of the Income Tax Act. The penalty was levied on the footing that the assessee had not obtained approval for registration in the Directorate General of Tourism, Government of India as per the provisions of Section 80HHD, read with Rule 18BBA.

3. As directed by this Court, the appellant has filed an additional affidavit dated 6.7.07 in which it is mentioned that the Government of India, Ministry of Tourism passed an order dated 11.2.2000 certifying that the appellant was recommended for the benefits from the date of commencement

of foreign exchange earnings for the purpose of Section 80HHD of the Income Tax Act, 1961. It was contended before us that certified copy of this order was produced before the Income Tax Appellate Tribunal, but was not considered while passing the Judgment. It was contended that this certificate operates "from the date of commencement of foreign exchange earnings" and this would cover the assessment years 1994-95 and 1995-96. It was further contended that under Rule 29 of the of the Income Tax Appellate Tribunal Rules, it was incumbent upon the Income Tax Appellate Tribunal to consider this as an additional evidence and deal with the effect of grant of such certificate. The Counsel appearing for the respondents states that the matter may be remanded for consideration of the effect of the Order dated 11.2.2000.

5. In the circumstances, the Judgment and Order passed by the Income Tax Appellate Tribunal , Panjim Bench, dated 19.1.2007 is set aside and the matter is remanded to the Tribunal for fresh consideration in accordance with law. While passing the Judgment, the Income Tax Appellate Tribunal will deal with the nature and effect of the order dated 11.2.2000. The appeal is disposed of with the aforesaid directions.

R.S. MOHITE, J.

N.A. BRITTO, J.

Ssm.